



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Benjamin L. Ginsberg, Esquire  
Patton Boggs LLP  
2550 M. Street, NW  
Washington, DC 20037

RE: MUR 5181  
Spirit of America PAC and  
Garrett Lott, as treasurer  
Ashcroft 2000 and Garrett Lott, as  
treasurer

Dear Mr. Ginsberg:

On December 11, 2003, the Federal Election Commission accepted the conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 441a(a)(2)(A), 441a(f), and 434(b), which are provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). Only portions of the file, including the enclosed conciliation agreement, will be placed on the public record within 30 days.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that \$7,000 of the civil penalty is due within thirty (30) days of the date this agreement becomes effective, and the remainder (\$30,000) within sixty (60) days of the agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia E. Tompkins".

Cynthia E. Tompkins  
Assistant General Counsel

Enclosure  
Conciliation Agreement



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Tony P. Trimble, Esquire  
Matthew W. Haapoja, Esquire  
Trimble & Associates, Ltd.  
11700 Wayzata Boulevard  
Minneapolis, MN 55305

RE: MUR 5181  
Spirit of America PAC and  
Garrett Lott, as treasurer  
Ashcroft 2000 and Garrett Lott, as  
treasurer

Dear Messrs. Trimble and Haapoja:

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Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia E. Tompkins", with a stylized flourish at the end.

Cynthia E. Tompkins  
Assistant General Counsel

Enclosure  
Conciliation Agreement

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

4 ) MUR 5181

5 Spirit of America PAC and Garrett Lott, as Treasurer)

6 Ashcroft 2000 and Garrett Lott, as Treasurer)

7  
8 **CONCILIATION AGREEMENT**  
9

10 This matter was initiated by a signed, sworn, and notarized complaint by the Alliance for

11 Democracy, Common Cause, the National Voting Rights Institute, Hedy Epstein and Ben

12 Kjelshus. An investigation was conducted, and the Federal Election Commission

13 ("Commission") found probable cause to believe that Spirit of America PAC ("PAC") and

14 Garrett Lott, as Treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and

15 Garrett Lott, as Treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).

16 NOW, THEREFORE, the Commission and Respondents (the PAC and Garrett Lott, as

17 Treasurer, and Ashcroft 2000 and Garrett Lott, as Treasurer, collectively), having duly entered

18 into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

19 I. The Commission has jurisdiction over the Respondents and the subject matter of  
20 this proceeding.

21 II. Respondents have had a reasonable opportunity to demonstrate that no action  
22 should be taken in this matter.

23 III. Respondents enter voluntarily into this agreement with the Commission.

24 IV. The pertinent facts in this matter are as follows:<sup>1</sup>

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<sup>1</sup> All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1. Ashcroft 2000 is a political committee within the meaning of 2 U.S.C. § 431(4). John Ashcroft filed a Statement of Candidacy on June 6, 1996 designating Ashcroft 2000 as his principal campaign committee for the 2000 Senate election.
2. Garrett Lott is the treasurer of Ashcroft 2000.
3. The PAC is a political committee within the meaning of 2 U.S.C. § 431(4). The PAC filed a Notice of Multicandidate Status with the Commission on October 7, 1998. That Notice stated that the PAC met the requirements of multicandidate status on September 22, 1997. See 2 U.S.C. § 441a(a)(4).
4. Garrett Lott is the treasurer of the PAC.
5. The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no multi-candidate political committee shall make contributions to any federal candidate and his or her authorized political committee with respect to a Federal election which in the aggregate exceed \$5,000. 2 U.S.C. § 441a(a)(2)(A). Candidates and political committees may not knowingly accept contributions, which exceed the statutory limitations of section 441a. 2 U.S.C. § 441a(f).
6. A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).
7. All political committees are required to file reports of their receipts and disbursements. 2 U.S.C. § 434(a). Pursuant to 2 U.S.C. § 434(b), such reports shall disclose all contributions made and received. Each report filed by a committee not authorized by a candidate must disclose all contributions made to candidates and their committees. 2 U.S.C. § 434(b)(6)(B)(i). All political committees must report the

1 identification of each political committee, which has made a contribution to the  
2 reporting committee, together with the date and amount of any such contribution.

3 2 U.S.C. § 434(b)(3)(B). All political committees must also report the identification  
4 of each person who provides any other receipt to the reporting committee in an  
5 aggregate value or amount in excess of \$200 within the calendar year. 2 U.S.C.  
6 § 434(b)(3)(G).

7 8. The PAC and Ashcroft 2000 used the same direct mail vendors, Bruce W. Eberle &  
8 Associates ("Eberle & Associates") and Precision Marketing, Inc. ("PMI"), to  
9 conduct their direct mail fundraising activity. Omega List Company, which is owned  
10 by Bruce Eberle and his wife, Kathi Eberle, served as the list manager for the mailing  
11 list that was developed by the PAC fundraising campaign conducted by Eberle &  
12 Associates. Precision List, Inc. ("PLI"), which is partly owned by Arthur Speck, the  
13 president of PMI, served as the list manager for the mailing list that was developed by  
14 the PAC fundraising campaign conducted by PMI; PLI also later managed a list that  
15 combined the names and addresses resulting from the PMI and Eberle & Associates  
16 fundraising campaigns on behalf of the PAC.

17 9. In January 1998, the PAC began a direct mail solicitation program operated by Eberle  
18 & Associates. The PAC rented lists or portions of lists from other organizations for  
19 prospecting; the prospecting letters were signed by or utilized the likeness of Mr.  
20 Ashcroft and identified him as chairman of the PAC. The PAC also entered into  
1 standard list exchange agreements with other organizations, which agreements  
2 permitted the PAC a one-time initial use of the names (i.e., prospecting). The PAC  
3 owned the names and addresses of individuals who responded to the initial mailings.

1 The names and addresses of those individuals who responded to the PAC's  
2 prospecting solicitations by making a contribution were maintained as the PAC's  
3 mailing list, which is referred to in the industry as a "housefile." The PAC reported  
4 to the Commission the PAC's expenditures related to mailing list development,  
5 including the cost of renting lists or portions of lists belonging to other organizations,  
6 creative and production fees, printing, mail preparation, postage, caging and escrow,  
7 and file maintenance fees in the PAC's disclosure reports filed with the Commission.  
8 However, these expenditures were not described with the detail noted above.

- 9 10. The PAC began its direct mail fundraising program pursuant to an agreement it  
10 entered into with Eberle & Associates. This "No-Risk Interim Agreement" dated  
11 January 15, 1998, pursuant to which Eberle & Associates performed two initial test  
12 mailings, provided that "both Eberle and the [PAC] have the right to unlimited and  
13 unrestricted usage of the donor records generated as a result of [the test] mailing."  
14 11. Eberle & Associates performed the bulk of the PAC's direct mail program from  
15 March 1998 through May 1999 pursuant to a "Direct Mail Fund Raising Counsel  
16 Agreement," with an effective date of March 12, 1998. This agreement provided that  
17 the "work product" - defined to include "mailing lists" and "lists of supporters of and  
18 contributors to the [PAC]" - "shall be the sole property of the [PAC]."  
19 12. On July 17, 1998 the PAC executed a Work Product Agreement ("WPA") with John  
20 Ashcroft, relating to the work product resulting from the use by the PAC of John  
21 Ashcroft's name and likeness "in connection with fundraising activities on behalf of  
22 the [PAC]". The WPA defined "work product" as "mailing lists, lists of supporters of  
23 and contributors to [the PAC], lists of prospective contributors to [the PAC], results

1 of polling data, and any and all other data and documentation regarding [the PAC] or  
2 John Ashcroft." The language of the WPA stated that "in exchange for the use of his  
3 name and likeness, the work product resulting from the [PAC's] activities shall be the  
4 exclusive property of John Ashcroft." The PAC owned the names and addresses of  
5 those responding to PAC solicitations. Respondents contend that John Ashcroft  
6 owned the work product as defined in the WPA and that the PAC and John Ashcroft  
7 exercised joint ownership and control over certain lists of contributors to, and  
8 supporters of, the PAC.

9 13. In May 1998, the PAC began to rent out its mailing list or portions of it to other  
10 organizations.

11 14. The PAC entered into an agreement with a second direct mail vendor, PMI, by a  
12 "Letter of Agreement" dated July 8, 1998. PMI performed direct mail services on  
13 behalf of the PAC pursuant to this agreement.

14 15. During 1998, through its vendors Eberle & Associates and PMI, the PAC sent over  
15 3.9 million prospecting solicitations at a cost of over \$1.7 million. Through the  
16 efforts of Eberle and Associates and PMI, the PAC developed mailing lists of the  
17 names and addresses of individuals who responded to Mr. Ashcroft's direct mail  
18 solicitations by contributing to the PAC.

19 16. Mr. Ashcroft entered into a List License Agreement ("LLA") with Ashcroft 2000 that  
20 was effective January 1, 1999. The LLA licensed to Ashcroft 2000 the right to use  
21 mailing lists owned by Mr. Ashcroft (including work product generated pursuant to  
22 the WPA and data owned by Mr. Ashcroft from other sources - the "Data") in  
23 Ashcroft 2000's direct mail solicitations. The LLA provided that, the work product

1 that resulted from Ashcroft 2000's use of the Data was jointly owned by Mr. Ashcroft  
2 and Ashcroft 2000. The license granted under the LLA was for a period of five (5)  
3 years and granted Ashcroft 2000 unlimited use of the Data, including the right to  
4 "sell, transfer, assign, license or sublicense" the Data. Ashcroft 2000 then utilized  
5 this Data as part of Ashcroft 2000's direct mail fundraising activities.

6 17. Up until late 1999, list rental income earned by rental of the PAC's mailing lists was  
7 paid to the PAC, the entity that developed the lists. The PAC disclosed its first list  
8 rental income receipts on August 10, 1998 on its report of receipts and disbursements  
9 filed with the Commission. Subsequent list rental income disclosed by the PAC  
10 during 1998 brought the total for that year to \$6,330.79. During the first half of 1999,  
11 the PAC's disclosed list rental income receipts increased to \$97,390.32. Additional  
12 list rental income was paid to the PAC during July 1999 – October 1999.

13 18. a. By letter dated December 10, 1999, Garrett Lott, writing as "Finance  
14 Coordinator" of both the PAC and Ashcroft 2000, announced to Omega List  
15 Company "the intention of Mr. Ashcroft that all list rental revenue assuming Spirit  
16 of America's debt has been paid off, [sic] be attributed to Ashcroft 2000." Garrett  
17 Lott's letter attached copies of six list rental income checks from Omega, payable to  
18 the PAC, which had not been deposited. Mr. Lott directed that the checks, with a  
19 range of dates from September 28, 1999 to December 3, 1999 and totaling  
20 \$49,131.42, be changed to be made payable to Ashcroft 2000. Finally, Mr. Lott's  
21 letter also attached a copy of the LLA "which shows Mr. Ashcroft's ownership of  
2 the names and his ability to grant the right of list rental to either party which he  
3 chooses."



1           b. In response to Eberle & Associates queries regarding the reissuing of the checks  
2           in December, 1999, Garrett Lott signed a letter drafted by Eberle & Associates'  
3           counsel which stated the transfer of these receipts was fully authorized by Mr.  
4           Ashcroft and the PAC and did not contravene any existing agreement, law and/or  
5           regulation of any government authority. Mr. Lott's letter further provided that  
6           Omega List Company and Bruce W. Eberle & Associates would be held harmless  
7           from any and all claims to the contrary.

8           c. After the above-described letter was provided, a seventh list rental check, for  
9           \$17,530.80, was similarly redirected. Although Omega had issued these seven  
10          checks to the PAC consistent with the terms of the Direct Mail Fund Raising  
11          Counsel Agreement dated March 12, 1998, between Eberle & Associates and the  
12          PAC, Omega re-issued a single check to Ashcroft 2000 for \$66,662.22 dated  
13          December 30, 1999. Ashcroft 2000 disclosed the receipt of this list rental income  
14          as "mail receipts."

15       19. Ashcroft 2000 received additional income during the year 2000 by selling the right to  
16       collect payment from persons who had rented the PAC's list from the PAC itself.  
17       Ashcroft 2000 sold these "accounts receivable" to PMI for \$46,299.83, pursuant to an  
18       agreement titled "Assignment of Accounts Receivable" effective March 31, 2000.  
19       Ashcroft 2000 disclosed, with no identified purpose, the receipt of \$46,299.83 from  
20       PMI on March 31, 2000.

21       20. Recital "A" to the WPA provided that the PAC was entitled to utilize the  
22       name/likeness of John Ashcroft "in connection with the fundraising activities of the  
23       [PAC]." Section 1 of the LLA granted Ashcroft 2000 "the right to sell, transfer,

1 assign, license or sublicense the Data to other persons or parties, including, but not  
2 limited, to candidates for public office, their volunteers, agents, employees and  
3 committees; political party units and their volunteers, agents, and employees; and any  
4 other commercial or professional fundraising vendors, volunteers or agents." Garrett  
5 Lott believed that the WPA and LLA gave him the authority to redirect list rental  
6 income.

7 21. Ashcroft 2000 received additional list rental income totaling \$121,254.98 through the  
8 vendor PLI during the period December 1999 through May 2001, a portion of which  
9 is attributable to the PAC's lists, and a portion of which is attributable to the rental by  
10 Ashcroft 2000 of its own housefile. Ashcroft 2000 incorrectly disclosed these  
11 payments as receipts from "Precision Marketing Inc." or "Precision Inc." instead of  
12 "Precision List, Inc." Only one of these list rental income receipts was actually  
13 disclosed with "rental" as the purpose; the others were disclosed with "mail receipts"  
14 as the purpose.

15 22. All parties to the WPA and LLA agreed that Garrett Lott was authorized under the  
16 WPA and LLA to redirect the LRI to Ashcroft 2000 once the PAC's debts were paid  
17 off and that the assignment of accounts receivable was a commercially reasonable  
18 means of raising funds more quickly than waiting for the accounts receivable to be  
19 paid. However, the Commission found that nothing in the WPA or LLA referred to  
20 either list rental income or accounts receivable.

21 V. 1. Based on the facts set forth above in paragraphs IV.18-19, list rental income  
22 earned by the PAC was provided to Ashcroft 2000. The PAC, as a multicandidate  
23 committee, may not make contributions to Ashcroft 2000 in an amount greater than

1        \$5,000 per election. See 2 U.S.C. § 441a(a)(2)(A). On June 30, 1999, the PAC made the  
 2        maximum allowable contributions to Ashcroft 2000, \$5,000 for the 2000 primary election  
 3        and \$5,000 for the 2000 general election. Thus, any additional contribution from the  
 4        PAC to Ashcroft 2000 is excessive. Therefore, the list rental income in the form of the  
 5        re-issued checks, and the proceeds from the sale of accounts receivable received by  
 6        Ashcroft 2000, which totaled over \$110,000, constituted an excessive contribution from  
 7        the PAC to Ashcroft 2000 in violation of 2 U.S.C. § 441a(a)(2)(A) and Ashcroft 2000  
 8        received this excessive contribution in violation of 2 U.S.C. § 441a(f). In order to resolve  
 9        this matter through conciliation the Respondents will not further contest the  
 10       Commission's findings set forth in this paragraph.

11            2. Neither the PAC nor Ashcroft 2000 disclosed the making or receipt of this  
 12        excessive contribution, in violation of 2 U.S.C. § 434(b). In order to resolve this matter  
 13        through conciliation the Respondents will not further contest the Commission's findings  
 14        set forth in this paragraph.

15            3. Ashcroft 2000 disclosed certain list rental income receipts from PMI that were  
 16        in fact received from PLI, and so failed to properly report these receipts in violation of  
 17        2 U.S.C. § 434(b). The chart below sets forth this misreporting.

Reported Receipt From	Reported Date	Amount	Actual Receipt From
Precision Marketing Inc.	3/21/00	\$14,645.81	Precision List Inc.
Precision Marketing Inc.	3/31/00	\$ 4,734.19	Precision List Inc.
Precision Marketing Inc.	6/28/00	\$ 6,384.49	Precision List Inc.
Precision Marketing Inc.	6/30/00	\$ 9,995.12	Precision List Inc.

Precision Marketing Inc.	8/07/00	\$ 8,882.96	Precision List Inc.
Precision Marketing Inc.	9/10/00	\$ 7,229.25	Precision List Inc.
Precision Marketing Inc.	9/30/00	\$13,536.75	Precision List Inc.
Precision Marketing Inc.	12/01/00	\$16,479.31	Precision List Inc.
Precision Marketing Inc.	1/10/01	\$18,124.08	Precision List Inc.
Precision Marketing Inc.	6/06/01	\$ 6,482.57	Precision List Inc.

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4. The PAC and Garrett Lott, as Treasurer, will cease and desist from violating

2 U.S.C. §§ 441a(a)(2)(A) and 434(b), and Ashcroft 2000 and Garrett Lott, as Treasurer, will

cease and desist from violating 2 U.S.C. §§ 441a(f) and 434(b).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Thirty-seven Thousand dollars (\$37,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission. Notwithstanding the foregoing, with respect to the civil penalty set forth at Section (VI) hereinabove, Respondents shall pay the amount of \$7,000.00 no more than thirty (30) days from the date this agreement becomes effective, with the

Precision Marketing Inc.	8/07/00	\$ 8,882.96	Precision List Inc.
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Precision Marketing Inc.	6/06/01	\$ 6,482.57	Precision List Inc.

4. The PAC and Garrett Lott, as Treasurer, will cease and desist from violating 2 U.S.C. §§ 441a(a)(2)(A) and 434(b), and Ashcroft 2000 and Garrett Lott, as Treasurer, will cease and desist from violating 2 U.S.C. §§ 441a(f) and 434(b).

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1 remaining amount of \$30,000.00 to be paid no more than sixty (60) days from the date this  
 2 agreement becomes effective.

3 X. This Conciliation Agreement constitutes the entire agreement between the parties  
 4 on the matters raised herein, and no other statement, promise, or agreement, either written or  
 5 oral, made by either party or by agents of either party, that is not contained in this written  
 6 agreement shall be enforceable.

7  
 8 FOR THE COMMISSION:

9  
 10 Lawrence H. Norton  
 11 General Counsel

12 BY: *Rhonda J. Vosdingh*  
 13 Rhonda J. Vosdingh  
 14 Associate General Counsel  
 15 for Enforcement  
 16

12/15/23  
 Date

17  
 18 FOR THE RESPONDENTS:

19  
 20 *Gauntt M. Both*  
 21 (Name) TREASURER, SPIRIT OF SENECA/  
 22 (Position) TREASURER, SENECA RACE ZOO  
 23  
 24

11/21/23  
 Date